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N.C. Utilities Commission

**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

September 2, 2011

Ms. Renné Vance, Chief Clerk
North Carolina Utilities Commission
Mail Service Center 4325
Raleigh, North Carolina 27699-4325

Re: Docket Nos. E-7, Sub 986, and E-2, Sub 998
Duke-Progress Merger Application

Dear Ms. Vance:

In connection with the above-referenced dockets, I transmit herewith for filing the original and 20 copies of the Agreement and Stipulation of Settlement between Duke Energy Corporation, Progress Energy, Inc., Duke Energy Carolinas, LLC, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc., and the Public Staff-North Carolina Utilities Commission (Stipulation), the stipulated Regulatory Conditions, which are Attachment A to the Stipulation, and the stipulated Code of Conduct, which is attached as Appendix A to the Regulatory Conditions.

By copy of this letter, I am forwarding a copy of the above to all parties of record.

Sincerely,

Gisele L. Rankin
Staff Attorney

gisele.rankin@psncuc.nc.gov

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HG
7Comm
Watson
Green
Hinkin
Hoover
Kite
Hilburn
Seasans
Encson
Jared
Hodge

GLR/bl
Attachment

cc: Parties of record

Executive Director
733-2435

Communications
733-2810

Economic Research
733-2902

Legal
733-6110

Transportation
733-7766

Accounting
733-4279

Consumer Services
733-9277

Electric
733-2267

Natural Gas
733-4326

Water
733-5610

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

**DOCKET NO. E-2, SUB 998
DOCKET NO. E-7, SUB 986**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Corporation)	AGREEMENT AND
and Progress Energy, Inc., to Engage in)	STIPULATION OF
a Business Combination Transaction and)	SETTLEMENT BETWEEN
to Address Regulatory Conditions and)	THE APPLICANTS AND
Code of Conduct)	THE PUBLIC STAFF

Duke Energy Corporation (Duke Energy), Progress Energy, Inc. (Progress Energy), their public utility subsidiaries Duke Energy Carolinas, LLC (DEC), and Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (PEC) (collectively the Applicants), and the Public Staff-North Carolina Utilities Commission (Public Staff), hereinafter referred to as the Stipulating Parties, through counsel and pursuant to G.S. 62-69, respectfully submit the following Agreement and Stipulation of Settlement (Stipulation) for consideration by the Commission in the above-captioned proceeding.

The Stipulating Parties agree and stipulate as follows:

1. **Regulatory Conditions.** The Regulatory Conditions, including the Code of Conduct, set forth in Attachment A represent commitments made by the Applicants as a precondition of approval by the Commission of the application of Duke Energy and Progress Energy pursuant to G.S. 62-111(a) for authority to engage in the proposed business combination transaction (Merger). These Regulatory Conditions will be incorporated into any order of the Commission approving the Merger.

2. **Savings Guarantee.** DEC and PEC will guarantee that North Carolina retail customers receive their allocable shares of \$650 million in total projected fuel and fuel-related cost savings, as well as a small amount of non-fuel operations and maintenance cost savings, to be achieved by them over the first five years following the

close of the Merger. The percentages allocated to the North Carolina retail jurisdiction over the five-year period will be consistent with current practice.

- (a) The guaranteed savings amount will be achieved and flowed to North Carolina retail customers in varying amounts in each year of the five-year period. Within 30 days after the Merger closes, DEC and PEC will file for a decrement in fuel rates for North Carolina retail customers that will remain in effect until rates are adjusted in their next fuel clause proceedings. These reductions will be based upon the projected fuel and fuel-related savings for Year 1 as set forth in the Merger Application Exhibits 4 and 5. The initial rate reduction will be based on the pro rata amount of Year 1 savings to be achieved during the period between the close of the Merger and the effective date of the rate changes in DEC's and PEC's next fuel clause proceedings, i.e., September 1, 2012, and December 1, 2012, respectively. A new decrement for fuel savings will be determined at the time of each respective fuel clause proceeding during the five-year period and will be implemented at the time new rates in that proceeding take effect. If at the end of the five year period, North Carolina retail customers have not received their allocable shares of the \$650 million of guaranteed savings, the remaining amount will be reflected as an adjustment in DEC's and PEC's fuel clause proceedings.
- (b) Savings are anticipated to be achieved in the following six categories: coal blending, coal commodity savings, reagents, transportation, gas capacity, and the gas trading desk, but such savings may also include other merger-related savings related to joint dispatch or fuel procurement.
- (c) Coal procurement savings, transportation savings, reagent savings, natural gas savings, and coal blending savings will be allocated between DEC and PEC in the same proportion as the joint dispatch savings.
- (d) DEC and PEC propose to determine the savings in the following manner:

- (i) The savings realized through the implementation of the Joint Dispatch Agreement will be determined in the manner identified in the revised proposed Joint Dispatch Agreement filed with the Commission on June 22, 2011, for the calculation and sharing of such savings between DEC and PEC.
- (ii) Coal Blending – Savings realized through coal blending by DEC (PEC is already engaging in coal blending practices) are proposed to be determined by multiplying the number of mmbtus of non-traditional coal delivered to DEC during the test period by the difference between the delivered price per mmbtu of traditional coal minus the delivered price per mmbtu of the non-traditional coal actually received. This calculation will be performed at the time of the coal purchase and be measured over the entire term of the contract. The term “traditional coal” is defined for this purpose as coal from Central Appalachia (CAPP) or another source that is of a similar heat content, fusion temperature, ash, sulfur content as CAPP coal and has been or could have been used in the DEC generation fleet without blending, or modification of the boiler feed, ash handling, combustion control systems, or other modification over and above the addition of scrubbers. “Non-traditional coal” is defined as all coal other than traditional coal.
- (iii) Coal Commodity Savings – These savings are proposed to be determined by comparing the price per ton on contracts procured or renegotiated jointly to the price per ton that would have been incurred by on a stand-alone basis. For example, if DEC and PEC can establish that as a result of negotiations and the leverage of being a larger buyer, the contract was executed at \$79 per ton year 1 and \$79.50 per ton year 2, instead of at \$80 per ton for 500,000 tons per year for two years, this would result in \$750,000 total savings. This calculation will be performed at the time of the coal

purchase and be measured over the entire term of the contract. Non-traditional coal consumed by DEC will be excluded to avoid double counting in this category and in the coal blending category.

- (iv) Reagents – The process proposed for determining these savings will be consistent with the process used to determine coal commodity savings.**
- (v) Transportation – These savings are proposed to be determined by comparing the price per ton under renegotiated or new contracts to the price per ton that would have been incurred otherwise. Reductions in existing rates from joint negotiations with any type of transporter will be included. For new contracts, the savings will reflect the price per ton that DEC and PEC can establish was negotiated jointly compared with the price per ton that would have been incurred on a stand-alone basis. This calculation is proposed to be performed at the time of the contract revision or initiation and is proposed to be measured over the entire term of the contract. Non-traditional coal consumed by DEC will be excluded to avoid double counting in this category and in the coal blending category.**
- (vi) Gas Capacity Savings – These savings are proposed to be determined by comparing the amount paid by the recipient of capacity under joint operations to the market price that would have been paid for capacity received under equivalent terms on a stand-alone basis.**
- (vii) Avoided Cost of Gas Trading Desk – These savings, which will result primarily from avoided labor and information technology-related costs, are proposed to be determined by comparing the cost of operating jointly to the cost of continuing to operate separate trading operations.**

These methods of determining savings will be subject to ongoing review, refinement, and revision through discussion among the Stipulating Parties based on experience as savings are realized.

- (e) DEC and PEC will file, with their monthly fuel reports under Commission Rule R8-52, monthly reports of tracked fuel savings on a total system, DEC, DEC North Carolina retail, PEC, and PEC North Carolina retail basis.

3. Annual Community Support and Charitable Contributions. DEC and PEC will provide annual community support and charitable contributions in North Carolina for four years from the close of the Merger at a level no less than \$9.2 million and \$7.28 million, respectively, based on the average of each company's annual contributions over the past five years (2006-2010).

4. Other Contributions. DEC and PEC will contribute a total of \$15 million dollars during the first year following the close of the Merger for purposes such as workforce development and low income energy assistance. The \$15 million will be allocated between DEC's and PEC's North Carolina service territories in proportion to the number of North Carolina retail customers served by each.

5. Significant Corporate and Utility Presence. Progress Energy and PEC will maintain a significant corporate and utility presence in downtown Raleigh following the close of the Merger.

6. Energy Control Center. PEC's generation dispatch function and employees will remain located in PEC's Energy Control Center in Raleigh until further order of the Commission.

7. Location of Core Utility Functions. In exchange for DEC, PEC, Florida Power Corporation, d/b/a Progress Energy Florida, Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc. and the regulated transmission and distribution operations of Duke Energy Ohio, Inc., being able to provide goods and services to each other at fully distributed cost, the utility functions that are considered core utility operations and support functions for DEC and PEC will

be part of DEC and PEC, and the employees performing these functions will be DEC and PEC employees and not service company employees of Duke Energy Business Services (DEBS) or Progress Energy Service Company (PESC).

8. Direct Charging of Costs. For purposes of distributing the costs of services provided between and among Affiliates, PEC will continue to use direct charging, and all PEC employees will continue to use positive time reporting. DEC will increase the amount of such costs that are directly charged and will complete the transition to direct charging and positive time reporting within two years following the close of the Merger. DEC will file semi-annual reports with the Commission detailing its progress in implementing these practices, with the first report due six months from the close of the Merger.

9. Pending FERC Proceedings. The hearing in these dockets will remain open until the FERC issues its order(s) in all three pending merger-related dockets (Docket No. EC-11-60-000 (Merger application); Docket No. ER11-3306-000 (the proposed Joint Dispatch Agreement); and Docket No. ER11-3307-000 (Joint Open Access Transmission Tariff)), until further order of the Commission. DEC and PEC agree that the parties will have an opportunity to analyze such order(s) and present positions as to whether or not such order(s) alter the benefits and risks associated with the Merger and whether further conditions and other actions are needed.

10. Joint Dispatch Agreement. DEC and PEC will be allowed to execute and participate in the revised proposed Joint Dispatch Agreement between Duke Energy Carolinas, LLC, and Carolina Power & Light Company (JDA), as filed with the Commission by DEC and PEC on June 22, 2011, upon the close of the Merger, subject to the Regulatory Conditions and assuming that the JDA is approved by the Federal Energy Regulatory Commission (FERC) without material condition or change.

11. Monitoring of JDA. In order to enable the Public Staff to monitor the implementation of the JDA, DEC and PEC will do the following:

- (a) provide, prior to the implementation of the JDA, a detailed description of the production cost model that will be used, including the algorithms,

assumptions, and inputs, by the model to simulate the production costs of DEC and PEC under the stand-alone utility case;

- (b) verify the accuracy of the production cost model in estimating stand-alone utility production costs by benchmarking the model against a recent historical period (e.g., 2009 - 2011) in which DEC and PEC dispatched their generation on a stand-alone basis;
- (c) notify the Public Staff at least quarterly when significant changes have been made to algorithms, assumptions and inputs to the model and provide an explanation justifying those changes; and
- (d) provide the Public Staff with all the information necessary to conduct an audit (i.e., spot check) of the model inputs and outputs as often as monthly, until the utilities and the Public Staff have gained experience with the model, and at least quarterly thereafter.

12. Costs to Achieve. Direct expenses associated with costs to achieve the Merger (direct merger costs) shall be excluded from DEC's and PEC's cost of service for retail ratemaking purposes. Direct merger costs are composed of change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers. With respect to capital costs, such as system integration costs (much of them associated with information technology) associated with costs to achieve merger savings, DEC and PEC may request recovery through depreciation or amortization in the first application for a general rate case filed by each of them after the close of the Merger and prior to December 31, 2013. In order to justify such cost recovery, DEC and PEC must show that these capital costs resulted in quantifiable cost savings to their respective North Carolina retail customers greater than the revenue requirement effect of the inclusion of these costs in rate base. The Public Staff opposes the inclusion of severance costs in cost of service for retail ratemaking purposes. But DEC and PEC will have the right to request recovery of these costs through amortization in the first

application for a general rate case filed after the close of the Merger and prior to December 31, 2013, upon a showing that these costs resulted in salary expense savings greater than the costs during the test period. The Public Staff will have the right to oppose such recovery.

13. New Affiliate Agreements. DEC and PEC will file for Commission review, no later than 30 days before the close of the Merger, the affiliate agreements contemplated to be used upon the close of the Merger, including, but not limited to, the following: (a) proposed utility-to-utility service agreements, with appendices containing the lists of services proposed to be taken and the process by which utility costs will be accumulated, directly charged, assigned, or allocated and any proposed allocation ratios; (b) proposed service company/utility service agreements with the same appendices; any proposed service company/non-utility service agreements and appendices; and any proposed utility/non-utility service agreements and appendices. If a Commission order has not been issued with respect to the filed agreements and appendices by the close of the Merger, DEC and PEC may operate on interim basis pursuant to such filed agreements and appendices. Each service agreement or other Affiliate agreement entered into by DEC and PEC following the close of the Merger shall reference the specific Regulatory Conditions and Code of Conduct provisions that are relevant to such agreement.

14. Service Quality Measurement. DEC, PEC, and the Public Staff will work together following the close of the Merger to propose a rulemaking for the purpose of standardizing the indices commonly used in the electric utility industry to measure service quality for use in reporting by the regulated utilities in North Carolina.

15. Approval of Merger. The terms of this Stipulation, including the Regulatory Conditions and Code of Conduct, will ensure that the proposed Merger will have no adverse impact on the rates charged and the service provided by DEC and PEC to North Carolina retail ratepayers, that DEC's and PEC's North Carolina retail ratepayers are protected and insulated to the maximum extent possible from all known and potential costs and risks associated with the Merger, and that the benefits of the Merger to DEC's and PEC's North Carolina retail ratepayers are sufficient to offset

those potential costs and risks. Therefore, the proposed Merger is justified by the public convenience and necessity and meets the standard for approval by the Commission under G.S. 62-111(a).

16. Support of Stipulation. The Stipulating Parties will support this Stipulation, the Regulatory Conditions, and the Code of Conduct in testimony before the Commission and in any proposed order or brief submitted to the Commission in this matter.

17. Waiver of Right to Cross-Examine. The Stipulating Parties will waive their respective rights to cross-examine each other's witnesses with respect to their prefiled testimony and exhibits. If, however, questions should be asked by any person who is not a Stipulating Party, including a member of the Commission, the Stipulating Parties reserve the right to present testimony and exhibits to respond to such questions and cross-examine any witnesses with respect to such testimony and exhibits, provided that such testimony, exhibits, and cross-examination are not inconsistent with this Stipulation.

18. Acceptance of Agreement in Its Entirety. This Stipulation is the product of give-and-take negotiations, and no portion of this Stipulation will be binding on the Stipulating Parties unless the entire Stipulation is accepted by the Commission.

(This space intentionally left blank. Signatures appear on following page)

The foregoing is agreed and stipulated to, this the 2nd day of September, 2011.

**DUKE ENERGY CORPORATION AND
DUKE ENERGY CAROLINAS, LLC**

By: 

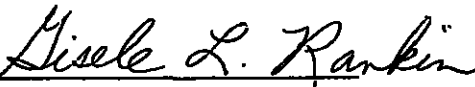
**Kodwo Ghartey-Tagoe
Vice President – Legal
Duke Energy Corporation**

**PROGRESS ENERGY, INC., AND
PROGRESS ENERGY CAROLINAS, INC.**

By: 

**Len S. Anthony
General Counsel
Progress Energy Carolinas, Inc.**

**PUBLIC STAFF-- NORTH CAROLINA
UTILITIES COMMISSION**

By: 

**Gisele L. Rankin
Counsel for the Public Staff-North Carolina
Utilities Commission**

ATTACHMENT A

DOCKET NO. E-2, SUB 998

DOCKET NO. E-7, SUB 986

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SEP 02 2011

Clerk's Office
N.C. Utilities Commission

REGULATORY CONDITIONS

SEPTEMBER 2, 2011

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REGULATORY CONDITIONS

These Regulatory Conditions set forth commitments made by Duke Energy and Progress Energy, and their public utility subsidiaries, Duke Energy Carolinas, LLC (DEC), and Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (PEC), as a precondition of approval of the application by Duke Energy and Progress Energy pursuant to G.S. 62-1111(a) for authority to engage in their proposed business combination transaction. These Regulatory Conditions, which become effective only upon closing of the Merger, shall apply jointly and severally to Duke Energy and Progress Energy, as well as jointly and severally to DEC and PEC, and shall be interpreted in the manner that most effectively fulfills the Commission's purposes as set forth in the preamble to Section II of these Regulatory Conditions.

SECTION I DEFINITIONS

For the purposes of these Regulatory Conditions, capitalized terms shall have the meanings set forth below. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this document or as commonly used in the electric utility industry.

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of these Regulatory Conditions, Duke Energy and each business entity so controlled by it are considered to be Affiliates of DEC and PEC, and DEC and PEC are considered to be Affiliates of each other.

Affiliate Contract: Any contract or agreement (a) between and among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's or PEC's Rates or Service, or (b) to which both DEC and any Affiliate are parties or PEC and any Affiliate are parties, including contracts with proposed Affiliates. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, and wholesale power sales agreements and agreements involving financings and asset transfers and sales.

Catawba Joint Owners: The North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency No. 1, and Piedmont Municipal Power Agency. For purposes of these Regulatory Conditions, DEC is not included in the definition of Catawba Joint Owners.

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of DEC and PEC, Duke Energy, the other Affiliates of DEC

and PEC, and the Nonpublic Utility Operations of DEC and PEC, as those guidelines and rules may be amended by the Commission from time to time.

Commission: The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or PEC in North Carolina.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEC, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within DEC's North Carolina service territories and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC and PEC, and any successor company.

Effect on DEC's or PEC's Rates or Service: When used with reference to the consequences to DEC or PEC of actions or transactions involving an Affiliate or Nonpublic Utility Operation, this phrase has the same meaning that it has when the Commission interprets G.S. 62-3(23)(c) with respect to the affiliation covered therein.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, or sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, and standby service.

Federal Law: Any federal statute or legislation, or any regulation, order, decision, rule or requirement promulgated or issued by an agency or department of the federal government.

FERC: The Federal Energy Regulatory Commission.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (1) the return on common equity utilized in determining such cost of capital for each good and service supplied by or from DEC or by or from PEC shall equal the return on common equity authorized by the Commission in DEC's or PEG's most recent general rate case proceeding, and (2) the cost of capital for each good and service supplied to DEC or PEC shall not exceed the overall cost of capital authorized by the Commission in DEC's or PEG's most recent general rate case proceeding; provided further that the cost of capital for each good and service supplied by or from DEC and PEC to each other shall not

exceed the overall cost of capital authorized by the Commission in the supplying entity's most recent general rate case proceeding.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission on April 1, 2011, and as revised and filed on April 4, 2011, in Docket Nos. E-7, Sub 980, and E-2, Sub 995, and allowed by the Commission to be filed with the FERC, by Order dated April 4, 2011, and as further revised and filed on June 22, 2011, and allowed to be filed with the FERC by Order dated July 11, 2011, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Progress Energy.

Native Load Priority: Power supply service being provided or electricity otherwise being sold with a priority of service equivalent to that planned for and provided by DEC or PEG to their respective Retail Native Load Customers.

Non-Native Load Sales: DEC's or PEG's sales of energy at wholesale, not including transactions between DEC and PEC pursuant to the JDA and not including service to customers served at Native Load Priority.

Nonpublic Utility Operations: All business operations engaged in by DEC or PEG involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS and PESC, other than a Utility Affiliate, DEC, or PEG.

PEG: Progress Energy Carolinas, Inc., the business entity wholly owned by Duke Energy that holds the franchises granted by the Commission to provide Electric Services within the North Carolina service territory of PEG and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

PESC: Progress Energy Services Company, and its successors, which is a service company Affiliate that provides Shared Services to PEC, DEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEC, individually or in combination.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of PEC, and which became a subsidiary of Duke Energy after the close of the Merger, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

PUHCA 2005: The Public Utility Holding Company Act of 2005.

Purchased Power Resources: Purchases of energy by DEC or PEC at wholesale from sellers other than each other, the contract terms for which are one year or longer.

Retail Native Load Customers: The captive retail Customers of DEC and PEC in North Carolina for which DEC and PEC have the obligation under North Carolina law to engage in long-term planning and to supply all Electric Services, including installing or contracting for capacity, if needed, to reliably meet their electricity needs.

Retained Earnings: The retained earnings currently required to be listed on page 112, line 11, of the pre-Merger DEC FERC Form 1 and the pre-Merger PEC FERC Form 1.

Shared Services: The services that meet the requirements of these Regulatory Conditions and that the Commission has explicitly authorized DEC and PEC to take from DEBS or PESC pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and these Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., and Florida Power Corporation, d/b/a Progress Energy Florida, and the regulated transmission and distribution operations of Duke Energy Ohio, Inc.

SECTION II

AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) constitute specific exercises of the Commission's authority, (b) provide mechanisms that enable the Commission to determine in advance the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, PEC, Duke Energy, other Affiliates or Nonpublic Utility Operations, and (c) protect the Commission's jurisdiction from federal preemption and its effects. The purpose of these Regulatory Conditions is to ensure that DEC's and PEC's Retail Native Load Customers (a) are protected from any known adverse effects from the Merger, (b) are

protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger. These Regulatory Conditions are not intended to impose legal obligations on entities in which Duke Energy does not directly or indirectly have a controlling voting interest, or to affect any rights of any party to participate in subsequent proceedings.

2.1 Waiver of Certain Federal Rights. Pursuant to these conditions, DEC, PEC, Duke Energy, and other Affiliates waive certain of their federal rights as specified in these Regulatory Conditions, but do not otherwise agree that the Commission has authority other than as provided for in Chapter 62.

2.2 Limited Right to Challenge Commission Orders. Other than as provided for, or explicitly prohibited, in these conditions, Duke Energy, DEC, PEC, and other Affiliates retain the right to challenge the lawfulness of any Commission order issued pursuant to or relating to these Regulatory Conditions on the basis that such order exceeds the Commission's statutory authority under North Carolina law or the other grounds listed in G.S. 62-94(b).

2.3 Waiver Request. DEC, PEC, Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions by filing a request with the Commission showing that exigent circumstances in a particular case justify such a waiver.

SECTION III PROTECTION FROM PREEMPTION

The following Regulatory Conditions are intended to protect the jurisdiction of the Commission against the risk of federal preemption as a result of the Merger, including risks related to agreements and transactions between and among DEC, PEC, and any of their Affiliates; financing transactions involving Duke Energy, DEC, or PEC, and any other Affiliate; the ownership, use, and disposition of assets by DEC or PEC; participation in the wholesale market by DEC or PEC; and filings with federal regulatory agencies.

3.1 Transactions between DEC, PEC, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC; Annual Certification.

- (a) Neither DEC nor PEC shall engage in any transactions with an Affiliate or proposed Affiliate without first filing the proposed Affiliate Contract with the Commission that memorializes any such dealings and taking such actions and obtaining from the Commission such decisions as are required under North Carolina law. DEC and PEC shall submit each proposed Affiliate Contract to the Public Staff for informal review at least ten days before filing it with the Commission. No formal advance

notice is required for agreements that DEC or PEC intends to file pursuant to G.S. 62-153 unless the agreements are to be filed with the FERC, in which case subsection (c) applies.

- (b) All Affiliate Contracts to which DEC or PEC is a party shall contain the following provisions:
 - (i) DEC's or PEG's participation in the agreement is voluntary, DEC or PEC is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC or PEC may elect to discontinue its participation in the agreement at its election after giving any required notice;
 - (ii) DEC or PEC may not make or incur a charge under the agreement except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder;
 - (iii) DEC or PEC may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the Commission or (B) revenue level earned under the agreement less than the amount imputed by the Commission; and
 - (iv) Neither DEC nor PEC shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity's assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission's power, authority or jurisdiction; DEC and PEC will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.
- (c) In order to enable the Commission to exercise its jurisdiction over a proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract that involves costs that will be assigned to DEC or PEC and that is required or intended to be filed with the FERC, the following procedures shall apply:
 - (i) DEC or PEC shall file advance notice and a copy of the proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract with the Commission at least 30 days prior to a filing with the FERC. A copy shall be provided to the Public Staff at the time of the filing. The

provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

- (ii) If an objection to DEC or PEC proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be made with the FERC until the Commission issues an order resolving the objection.
- (iii) Filings of advance notices and copies of proposed Affiliate Contracts, a contract with a proposed Affiliate, and amendments to existing Affiliate Contracts pursuant to this subsection shall be in addition to filings required by G.S. 62-153, and the burden of proof as to those filings shall be as provided by statute.
- (d) Both DEC and PEC shall certify in a filing with the Commission that neither DEC, PEC, Duke Energy, any other Affiliate, nor any Nonpublic Utility Operation has made any filing with the FERC or any other federal regulatory agency inconsistent with the foregoing. Such certification shall be repeated annually on the anniversary of the first certification.

3.2 Financing Transactions Involving DEC, PEC, Duke Energy, or Other Affiliates.

- (a) With respect to any financing transaction between DEC or PEC and Duke Energy, or any one or more of DEC's or PEC's other Affiliates, any contract memorializing such transaction shall expressly provide that DEC or PEC shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and
- (b) With respect to any financing transaction (i) between and among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's or PEC's Rates or Service, or (ii) between DEC and PEC or between DEC or PEC and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC and/or PEC shall not include the effects of any capital structure or debt or equity costs associated with such financing transaction in its North Carolina retail cost of service or rates except as allowed by the Commission.

3.3 Ownership and Control of Assets Used by DEC and PEC to Supply Electric Power to North Carolina Retail Customers; Transfer of Ownership or Control.

- (a) DEC and PEC shall each own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power to their respective North Carolina retail Customers (with the

exception of assets solely used to provide power purchased by DEC or PEC at wholesale).

- (b) With respect to the transfer by DEC or PEC to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of such assets with a gross book value in excess of ten million dollars (\$10 million), DEC or PEC shall provide written notice to the Commission at least 30 days in advance of the proposed transfer. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.
- (c) Any contract memorializing such a transfer shall include the following language:
 - (i) DEC or PEC may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and
 - (ii) DEC or PEC may not include in its North Carolina retail cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the Commission in accordance with North Carolina law.
- (d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects DEC or PEC shall include the language set forth in subdivisions (c)(i) and (ii), above, and shall request that the FERC explicitly provide in any order approving the application that its approval in no way affects the right of the Commission to review the value of such transfer and to establish the value of the asset transfer for purposes of determining the rates for services rendered to DEC's and PEG's North Carolina retail Customers.

3.4 Purchases and Sales of Electricity between DEC, PEC, Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, neither DEC nor PEC shall purchase electricity (or related ancillary services) from Duke Energy, another Affiliate, or a Nonpublic Utility Operation under circumstances where the total all-in costs, including generation, transmission, ancillary costs, distribution, taxes and fees, and delivery point costs, incurred (whether directly or through allocation), based on information known, anticipated, or reasonably available at the time of purchase, exceed fair Market Value for comparable service, nor shall DEC or PEC sell electricity (or related ancillary services) to Duke Energy, another Affiliate, or a Nonpublic Utility Operation for less than fair Market Value; provided, however, that such restrictions shall not apply to emergency transactions. This condition shall not apply to transactions between DEC and PEC that are governed by the JDA.

3.5 Least Cost Integrated Resource Planning and Resource Adequacy. DEC and PEC shall each retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and PEC shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to their respective Retail Native Load Customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources to those Retail Native Load Customers.

3.6 Priority of Service.

- (a) The planning and joint dispatch of DEC's system generation and Purchased Power Resources shall ensure that DEC's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.
- (b) The planning and joint dispatch of PEG's system generation and Purchase Power Resources shall ensure that PEG's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. PEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

3.7 Wholesale Power Contracts Granting Native Load Priority.

- (a) DEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands, North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North Carolina Municipal Power Agency No. 1; Piedmont

Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc. (which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition 3.9, the retail native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5; provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.

- (b) PEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency; the electric membership cooperatives (EMCs) within PEC's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; and the Town of Sharpsburg, North Carolina. Subject to the conditions set out in Regulatory Condition 3.9 below, the retail native loads of these historically served wholesale customers shall be considered PEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.
- (c) Before either DEC or PEC executes any contract that grants Native Load Priority to a wholesale customer (other than as set forth in subdivisions (a) and (b) above) or to one or more retail customers of another entity, it must provide the Commission with at least 30 days' written advance notice of its intent to grant Native Load Priority and to treat the retail native load of a proposed wholesale customer as if it were DEC's or PEC's retail native load pursuant to Regulatory Conditions 3.5, 3.6, and 4.5. The provisions set forth in Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

3.8 Other Wholesale Contracts. To the extent that DEC's or PEC's proposed wholesale power contracts or other sales of energy and capacity are at less than

Native Load Priority, then no advance notice is required and no approval by the Commission is needed.

3.9 Additional Provisions Regarding Wholesale Contracts Entered into by DEC or PEC as Sellers.

- (a) The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's or PEG's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.
- (b) Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or PEC to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments constitutes acceptance by DEC, PEC, Duke Energy, and other Affiliates or Nonpublic Utility Operations thereof of the risks that investments in generating facilities or commitments to purchase capacity and energy to meet such contractual commitments and maintain an adequate reserve margin throughout the term of such contracts may become uneconomic sunk costs that are not recoverable from DEC's or PEG's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor PEC shall claim that it does not bear this risk, and both DEC and PEC shall acknowledge that the Commission retains full authority under Chapter 62 to disallow such costs as not used and useful and to allocate, impute, or assign such costs away from Retail Native Load Customers. For purposes of this condition, capacity will be considered used and useful and not excess capacity to the extent the Commission determines such capacity is needed by DEC or PEC to meet the expected peak loads of DEC's or PEG's respective Retail Native Load Customers in the near term future plus a reserve margin comparable to that currently being used or otherwise considered appropriate by the Commission. Neither DEC, PEC, Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the Commission is preempted from taking the actions contemplated in this subsection.
- (c) Neither DEC, PEC, Duke Energy, or other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that (1) transactions entered into pursuant to DEC's or PEG's cost- or market-based rate authority or (2) the filing with, or acceptance for filing by, the FERC of any wholesale power contract to which either is a party establishes or implies a cost allocation methodology that is binding on the Commission, requires the pass-through of any costs or revenues

under the ~~filed~~ rate doctrine, or preempts the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow the revenues and costs associated with, DEC's or PEG's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

- (d) Neither DEC, PEC, Duke Energy, or other Affiliate shall assert in any forum ~~– whether judicial, administrative, federal, state, local or otherwise –~~ either on its own initiative or in support of any other entity's assertions that the exercise of authority by the Commission to assign, allocate, impute, make pro-forma adjustments to, or disallow the costs and revenues associated with DEC's or PEG's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. However, DEC and PEC retain the right to argue that a specific exercise of authority by the Commission violates the Commerce Clause based upon specific evidence of undue interference with interstate commerce.
- (e) Except as provided in the foregoing conditions, DEC and PEC retain the right to challenge the lawfulness of any order issued by the Commission in connection with the assignment, allocation, imputation, pro-forma adjustments to, or disallowances of the revenues and costs associated with DEC's or PEG's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes on any other grounds, including but not limited to the right outlined in G.S. 62-94(b).

3.10 Other Protections.

- (a) Neither DEC, PEC, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that approval by the FERC of market-based rates, transfers of generating facilities, or any matter that involves Affiliates in any way preempts the Commission's authority to determine the reasonableness or prudence of DEC's or PEG's decisions with respect to supply-side resources, demand-side management, or any other aspect of resource adequacy.
- (b) No agreement shall be entered into, nor shall any filing be made with the FERC, by or on behalf of DEC or PEC, that (a) commits DEC or PEC to, or involves either of them in, joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other or with one or more other Affiliates, or (b)

otherwise alters DEC's or PEG's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission.

- (c) DEC, PEC, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission at least 30 days prior to filing with the FERC any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document that has the potential to (a) affect DEC's or PEC's retail cost of service for system power supply resources or transmission system; (b) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (c) be interpreted as involving DEC or PEC in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (d) otherwise have an Effect on DEC's or PEG's Rates or Service. The provisions set forth in Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition; provided, however, that, to the extent the filing with the FERC is not to be made by DEC or PEC, the advance notice procedures shall be for the purpose of a determination by the Commission as to whether the filing is reasonably likely to have an Effect on DEC's or PEG's Rates or Service.
- (d) Any contract or filing regarding DEC's or PEG's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval.
- (e) Consistent with G.S. 62-153, DEC and PEC shall obtain prior approval of any proposed substantive revisions to any Affiliate agreement to which either of them is a party.
- (f) DEC and PEC shall obtain Commission approval before either DEBS or PESC is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS or PESC within the Duke Energy holding company system that does not constitute a change of control.
- (g) DEC and PEC may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS or PESC on behalf of DEC or PEC, or in which DEC or PEC participates, must clearly identify DEBS or PESC as an agent of DEC or PEC for purposes of making the filing.
- (h) Neither DEC, PEC, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall make any assertion or argument either on its own

initiative or in support of any other entity's assertions in any forum – whether judicial, administrative, federal, state, or otherwise – with respect to any contract, transaction, or other matter in which DEC or PEC is involved or proposes to be involved or any contract, transaction, or matter involving or proposed to involve Duke Energy, any other Affiliate, or any Nonpublic Utility Operation that may have an Effect on DEC's or PEC's Rates or Service, that the Commission is in any way preempted, in whole or in part, by Federal Law, or is acting beyond the Commission's power, authority or jurisdiction, in exercising its authority under North Carolina law as follows:

- (i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC or PEC, or disallowing the costs of, or imputing revenues related to such commitment to, DEC or PEC;
- (ii) exercising its authority over financings or setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for retail ratemaking purposes;
- (iii) reviewing the reasonableness of any commitment entered into or proposed to be entered into by DEC or PEC to transfer an asset;
- (iv) mandating, approving, or otherwise regulating a transfer of assets;
- (v) scrutinizing and establishing the value of any asset transfers for the purpose of determining the rates for services rendered to DEC's or PEC's Retail Native Load Customers; or
- (vi) exercising any other lawful authority it may have.

Should any other entity so assert, neither DEC, PEC, Duke Energy, other Affiliates, nor the Nonpublic Utility Operations shall support any such assertion and shall, promptly upon learning of such assertion, advise and consult with the Commission and the Public Staff regarding such assertion.

- (vii) DEC, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (a) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC or PEC or which may otherwise affect DEC's or PEC's operations, service, or rates and (b) shall take all actions as may be reasonably necessary and appropriate to hold

North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or any other adverse effects of such preemption. Such actions include, but are not limited to, filing with and making reasonable efforts to obtain approval from the FERC or other applicable federal entity of such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.

3.11 FERC Filings and Orders. In addition to the filing requirements of Commission Rule RB-27 and all other applicable statutes and rules, DEC and PEC shall, on a quarterly basis, file with the Commission the following: (a) a list of all active dockets at the FERC, including a sufficient description to identify the type of proceeding, in which DEC, PEC, Duke Energy, DEBS, or PESC is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, PEC, Duke Energy, DEBS, or PESC with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, as appropriate, and updated regularly. In addition, DEC and PEC shall serve on the Public Staff all filed cost-based and market-based wholesale agreements and amendments; all filings related to their Joint Open Access Transmission Tariff; interconnection agreements and amendments; and any other filings made with the FERC, to the extent these other filings are reasonably likely to have an Effect on DEC's or PEG's Rates or Service.

SECTION IV JOINT DISPATCH

The following Regulatory Conditions are intended to prevent the jurisdiction and authority of the Commission from being preempted as a result of the JDA, to ensure that DEC's and PEG's Retail Native Load Customers receive adequate benefits from the JDA, and to ensure that both joint dispatch costs and the sharing of cost savings can be appropriately audited.

4.1 Conditional Approval and Notification Requirement. DEC and PEC acknowledge that the Commission's approval of the merger and the transfer of dispatch control from PEC to DEC for purposes of implementing the JDA and any successor document is conditioned upon the JDA or successor document never being interpreted as providing for or requiring: (a) a single integrated electric system, (b) a single BAA, control area or transmission system, (c) joint planning or joint development of generation or transmission, (d) DEC or PEC to construct generation or transmission facilities for the benefit of the other, (e) the transfer of any rights to generation or transmission facilities from DEC or PEC to the other, or (f) any equalization of DEC's and PEG's production costs or rates. If, at any time, DEC, PEC or any other Affiliate learns that any of the foregoing interpretations are being considered, in whatever forum, they shall promptly notify and consult with the Commission and the Public Staff regarding appropriate action.

4.2 Advance Notice Required. To the extent that DEC and PEC desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and PEC shall file advance notice with the Commission at least 30 days prior to taking any action to amend the JDA or a successor document or to enter into a separate agreement. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

4.3 Function in DEC or PEC. The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or PEC.

4.4 No Limitation on Obligations. DEC and PEC acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and PEC's public utility obligations or to provide for joint dispatch in a fashion that is inconsistent with those obligations, including, without limitation, the following: (a) DEC's obligation to plan for and provide least cost electric service to its Retail Native Load Customers and PEC's obligation to plan for and provide least cost electric service to its Retail Native Load Customers; (b) DEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales; and (c) PEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 Protection of Retail Native Load Customers. All joint dispatch and other activities pursuant to the proposed JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and PEC's respective service obligations to their Retail Native Load Customers, (b) fulfill each utility's obligation to serve its own Retail Native Load Customers with its lowest cost generation; and (c) minimize the total costs incurred by DEC and PEC to fulfill their respective obligations to their Retail Native Load Customers. In no event shall any Non-Native Load Sales be made if, based upon information known, anticipated, or reasonably available at the time a sale is made, any such sale results in higher fuel and fuel-related costs or non-fuel O&M costs, on a replacement cost basis, than would otherwise have been incurred unless the revenues credited from each such sale more than offset the higher costs.

4.6 Treatment of Costs and Savings. DEC's and PEC's respective fuel and fuel-related costs and non-fuel O&M costs, and the treatment of savings for retail ratemaking purposes, shall be calculated as provided in the JDA, unless explicitly changed by order of the Commission.

4.7 Required Records. DEC and PEC shall keep records related to the JDA or any successor document as prescribed by the Commission and in such detail as may be necessary to enable the Commission and the Public Staff to audit both the actual joint dispatch costs and the sharing of cost savings.

4.8 Auditing of Negative Margins. DEC and PEC also shall keep records that provide such detail as may be necessary to enable the Commission and the Public Staff to audit the circumstances that cause any negative margin on a Non-Native Load Sale or a negative transfer payment made pursuant to Section 7.5(a)(ii) of the JDA.

4.9 Protection of Commission's Authority. Neither DEC, PEC, nor any Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that any aspect of the JDA or successor document is intended to diminish or alter the jurisdiction or authority of the Commission over DEC or PEC, including, among other things, the jurisdiction and authority of the Commission to do the following: (a) establish the retail rates on a bundled basis for DEC or PEC, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and PEC to engage separately in least cost integrated resource planning, and (e) issue certificates of public convenience and necessity for new generating and transmission resources.

4.10 Preventive Action Required. DEC, PEC, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or PEC from being considered by the FERC to be (a) part, or all, of a power pool, (b) sufficiently integrated to be one integrated system, or (c) otherwise fully subject to the FERC's jurisdiction, as the result of DEC's and PEG's participation in the JDA or any successor document.

4.11 Modification and Termination. DEC and PEC shall modify or terminate the JDA if at any time following consummation of the Merger the Commission finds, after notice and opportunity to be heard, that the JDA does not produce overall cost savings for, or is otherwise not in the best interests of, the North Carolina ratepayers of both DEC and PEC.

SECTION V

TREATMENT OF AFFILIATE COSTS AND RATEMAKING

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC and PEC are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for their respective Retail Native Load Customers are included in DEC's and PEG's North Carolina retail cost of service for ratemaking purposes. The procedures set forth in Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 Access to Books and Records. In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and

records of DEC, PEC, Duke Energy Corporation, other Affiliates, and the Nonpublic Utility Operations.

5.2 Procurement or Provision of Goods and Services by DEC or PEC to or from Affiliates or Nonpublic Utility Operations. Except as to transactions between DEC and PEC pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC and PEC shall take the following actions in connection with procuring goods and services for their respective utility operations from Affiliates or Nonpublic Utility Operations and providing goods and services to Affiliates or Nonpublic Utility Operations:

- (a) DEC and PEC shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that neither DEC nor PEC could have provided the services or goods for itself on the same basis at a lower cost. To this end, no less than every four years DEC and PEC shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, PESC, another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between and among DEC, PEC, and the Utility Affiliates, those goods and services may be provided at the supplier's Fully Distributed Cost.
- (b) To the extent they are allowed to provide such goods and services, DEC and PEC shall have the burden of proving that all goods and services provided by either of them to Duke Energy, a Non-Utility Affiliate, any other Affiliate, or a Nonpublic Utility Operation have been provided on the terms and conditions comparable to the most favorable terms and conditions reasonably available in the market, which shall include a showing that such goods or services have been provided at the higher of cost or market price. To this end, no less than every four years DEC and PEC shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, PESC, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.

- (c) The periodic assessments required by subdivisions (a) and (b) of this subsection may take into consideration qualitative as well as quantitative factors. To the extent that comparable goods or services provided to DEC or PEG or by DEC or PEG are not commercially available, this Regulatory Condition shall not apply.

5.3 Location of Core Utility Functions. Core utility functions (i.e., those that are considered public utility operations and support functions) will be part of DEC and PEG, and the employees performing these functions will be DEC and PEG employees and not service company employees of DEBS or PESC. If in the future DEC or PEG desires to move these functions to another entity, Regulatory Condition 13.2 will apply and 30 days' advance notice will be required. The following functions are core utility functions for DEC and PEG:

- (a) Outage and Maintenance Services Fuels and System Optimization Power Generation Operations;
- (b) Electric Transmission and Distribution Operations, Engineering and Construction; (except for grid modernization functions, which may remain in DEBS);
- (c) Project Management and Construction (except for Enterprise Project Management Center of Excellence, Project Development and Initiation, Fossil/Hydro Retrofits, Major Project Services, Commercial and International Major Projects and Performance Improvement, which may remain in DEBS);
- (d) Environmental Health and Safety (except for Health and Safety, Environmental Programs and Compliance, EHS Support Systems, and Duke Energy International, which may remain in DEBS);
- (e) Central Programs and Services for Fossil/Hydro Services (except for Central Programs, Application Support, NERC/CIP, SMEs, Discipline Engineering, CT Services, Lab Services, Environmental Compliance Strategy, and Emerging Technology, which may remain in DEBS).
- (f) Customer Operations/Customer Relations;
- (g) Rates and Regulatory (except for Rate Design and Analysis and State Support and Research, which may remain in DEBS);
- (h) Nuclear Generation (except for Nuclear Development, which may remain in DEBS);
- (i) Wholesale Power and Renewable Generation; and

- (j) **Integrated Resource Planning and Analytics (except for Production Cost Modeling & Data Management, which may remain in DEBS)**

Notwithstanding the foregoing, DEC and PEC may file a list of employees at the higher levels of management for their core utility functions that they propose to remain or become DEBS or PESC employees. Within 30 days of this filing, the Public Staff shall file a response and make a recommendation as to how the Commission should proceed. This filing shall be made in Docket No. E-7, Sub 986A, and will not be subject to the provisions of Regulatory Condition 13.2.

5.4 Service Agreements and Lists of Services.

- (a) **DEC and PEC shall file pursuant to G.S. 62-153 final proposed service agreements that authorize the provision and receipt of non-power goods or services between and among DEC, PEC, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC and PEC each intend to take from DEBS and PESC, the list(s) of goods and services DEC and PEC intend to take from each other and other Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve payment of fees or other compensation by DEC or PEC shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.**
- (b) **DEC and PEC shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC and PEC shall file notice with the Commission in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A, respectively, at least 15 days prior to making any proposed changes to the service agreements or to the lists of services.**

5.5 Charges for and Allocations of the Costs of Affiliate Transactions. To the maximum extent practicable, all costs of Affiliate transactions shall be directly charged. When not practicable, such costs shall be assigned in proportion to the direct charges. If such costs are of a nature that direct charging and direct assignment are not practicable, they shall be allocated in accordance with Commission-approved allocation methods. The following additional provisions shall apply:

- (a) **DEC and PEC shall keep on file with the Commission cost allocation manuals (CAMs) with respect to goods or services provided by DEC or PEC, any Utility Affiliate, DEBS or PESC, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to either DEC or PEC.**

- (b) Each CAM shall describe how all directly charged, direct assignment, and other costs for each provider of goods and services will be charged between and among DEC, PEC, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.
- (c) The CAM(s) shall be updated annually, and the revised CAM(s) shall be filed with the Commission no later than March 31 of the year that the CAM(s) are to be in effect. DEC and PEC shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM(s), if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.
- (d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS or PESC) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until DEC or PEC has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 Procedures Regarding Interim Changes to the CAMs or Lists of Goods and Services for which 15 Days' Notice Is Required. With respect to interim changes to the CAMs or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC or PEC may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A.

5.7 Annual Reports of Affiliate Transactions. DEC and PEC shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, PEC, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 986B, and E-2, Sub 998B.

5.8 Third-party Independent Audits of Affiliate Transactions.

- (a) No less often than every two years, a third-party independent audit shall be conducted related to the affiliate transactions undertaken pursuant to Affiliate agreements filed in accordance with Regulatory Condition 5.4 and of DEC's and PEC's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the propriety of the transfer pricing of goods and services between and/or among DEC, PEC, other Affiliates, and all of the Nonpublic Utility Operations.**
- (i) The first audit following the close of the transaction shall begin two years from the date of close and shall include whether DEC and PEC have adopted systems, policies, CAMs, and other processes to ensure compliance with all of the conditions related to Affiliate dealings and the Code of Conduct and have operated in accordance with those conditions and Code of Conduct.**
- (ii) The second audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the first audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's and PEC's transactions, services, and other Affiliate dealings pursuant to the regulated utility-to-regulated utility service agreement and any other utility to utility agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC and PEC have operated in accordance with those conditions and Code of Conduct.**
- (iii) The third audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the second audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's and PEC's transactions, services, and other Affiliate dealings pursuant to the Service Company Utility Service Agreement and other Affiliate transactions other than transactions undertaken pursuant to regulated utility to regulated utility service agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC and PEC have operated in accordance with those conditions and Code of Conduct.**
- (iv) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the second and third independent audits. DEC or PEC may request a change in**

the frequency of the audit reports in future years, subject to approval by the Commission.

(b) The following further requirements apply:

- (i) The independent auditor shall have sufficient access to the books and records of DEC, PEC, Duke Energy, other Affiliates, and all of the Nonpublic Utility Operations to perform the audits.
- (ii) For each audit, the Public Staff shall propose one or more independent auditor(s). DEC, PEC, and other parties shall have an opportunity to comment and propose additional auditors. Selection of the independent auditor shall be made by the Commission. Any party proposing an independent auditor shall file such auditor's audit proposal with the Commission.
- (iii) The independent auditor shall be supervised in its duties by the Public Staff, and the auditor's reports shall be filed with the Commission.

5.9 On-Going Review by Commission.

- (a) The services rendered by DEC and PEC to their Affiliates and Nonpublic Utility Operations and the services received by DEC or PEC from their Affiliates and Nonpublic Utility Operations pursuant to the filed service agreements, the costs and benefits assigned or allocated in connection with such services, and the determination or calculation of the bases and factors utilized to assign or allocate such costs and benefits, as well as DEC's and PEG's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.4(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate.

5.10 Future Orders. For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's or PEG's cost of service as the Commission may determine are necessary to ensure that DEC's and PEG's operations and transactions with their Affiliates and Nonpublic Utility Operations are consistent with the

Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

5.11 Review by the FERC. Notwithstanding any of the provisions contained in these Regulatory Conditions, to the extent the allocations adopted by the Commission when compared to the allocations adopted by the other State commissions with ratemaking authority as to a Utility Affiliate of DEC or PEC result in significant trapped costs related to "non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system," including DEC and PEC, DEC and PEC may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC "review and authorize the allocation of the costs for such goods and services to the extent relevant to that associate company." Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms "associate company" and "holding company system" are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

5.12 Biannual Review of Certain Transactions by Internal Auditors. Transactions between DEC or PEC and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between DEC and PEC, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's or PEG's Rates or Service, shall be reviewed at least biannually by Duke Energy Corporation's internal auditors. To the extent external audits of the transactions are conducted, DEC and PEC shall make available such audits for review by the Public Staff and the Commission. DEC and PEC also shall make available for review by the Public Staff and the Commission all workpapers relating to internal audits and all other internal audit workpapers, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant external audit workpapers.

5.13 Notice of Service Company and Non-Utility Affiliates FERC Audits. At such time as either DEC, PEC, Duke Energy, DEBS, or PESC receives notice from the FERC related to an audit of any Affiliate of DEC or PEC, DEC or PEC shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, respectively.

5.14 Acquisition Adjustment. Any acquisition adjustment that results from the Merger shall be excluded from DEC's and PEG's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or PEG's North Carolina retail electric rates and charges.

5.15 Non-Consummation of Merger. If the merger is not consummated, neither the cost, nor the receipt, of any termination payment between Duke Energy and

Progress Energy shall be allocated to DEC or PEG or recorded on their books. DEC's or PEG's North Carolina retail customers shall not otherwise bear any direct expenses or costs associated with a failed merger.

5.16 Protection from Commitments to Wholesale Customers.

- (a) For North Carolina retail electric cost of service/ratemaking purposes, DEC's and PEG's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, between PEG and the North Carolina Eastern Municipal Power Agency as joint owner, and between either DEC or PEG and any of their wholesale customers.
- (b) To the extent commitments to DEC's or PEG's wholesale customers relating to the Merger are made by or imposed upon DEC or PEG, the effects of which (a) decrease the bulk power revenues that are assigned or allocated to DEC's or PEG's North Carolina retail operations or credited to DEC's or PEG's jurisdictional fuel expenses, (b) increase DEC's or PEG's North Carolina retail cost of service, or (c) increase DEC's or PEG's North Carolina retail fuel costs under reasonable cost assignment and allocation practices approved or allowed by the Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.
- (c) To the extent that commitments are made by or imposed upon DEC, PEG, Duke Energy Corporation, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 Joint Owner-Specific Issues. Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from (a) the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners or (b) the North Carolina Eastern Municipal Power Agency as a result of agreements between it and PEG.

5.18 Inclusion of Cost Savings in Future Rate Proceedings. Neither DEC, PEG, Duke Energy Corporation, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate

proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC and PEC.

5.19 Reporting of Costs to Achieve. The North Carolina portion of costs to achieve any business combination transaction savings shall be reflected in DEC's and PEG's North Carolina ES-1 report as recorded on its books and records under generally accepted accounting principles. DEC and PEC shall include as a footnote in the ES-1 reports the merger related costs to achieve that were expensed during the relevant period.

5.20 Accounting for Costs to Achieve Related to Historical Events Involving PEC. All costs of PEG's merger with North Carolina Natural Gas Company, the Formation of Progress Energy, and Progress Energy's merger with Florida Progress Corporation shall be excluded from PEG's utility accounts, and all direct or indirect corporate cost increases, if any, attributable to those three events shall be excluded from utility costs for all purposes that affect PEG's regulated retail rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level PEC would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. "Corporate cost increases" shall also include any payments made under change-of-control agreements, salary continuation agreements, and/or other severance- or personnel-type arrangements that are reasonably attributable to these transactions.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

- (a) DEC's and PEG's Retail Native Load Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (a) manufactured gas plant sites, (b) asbestos claims, (c) environmental compliance, (d) pensions and other employee benefits, (e) decommissioning costs; and (f) taxes.
- (b) DEC's and PEG's Retail Native Load Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (a) any outages at and repairs of Crystal River 3, (b) manufactured gas plant sites, (c) asbestos claims, (d) environmental compliance, (e) pensions and other employee benefits, (f) decommissioning costs, and (g) taxes.
- (c) DEC's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of PEC, and PEG's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 Hold Harmless Commitment. DEC, PEC, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina retail ratepayers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting North Carolina retail customers.

5.23 Cost of Service Manuals. Within six months after the closing date of the Merger, DEC and PEC shall each file with the Commission revisions to its electric cost of service manual to reflect any changes to the cost of service determination process made necessary by the Merger, any subsequent alterations in the organizational structure of DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations, or other circumstances that necessitate such changes. These filings shall be made in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A, respectively.

SECTION VI CODE OF CONDUCT

These Regulatory Conditions include a Code of Conduct in Appendix A. The Code of Conduct governs the relationships, activities and transactions between and among the public utility operations of DEC, PEC, Duke Energy, the Affiliates of DEC and PEC, and the Nonpublic Utility Operations of DEC and PEC.

6.1 Obligation to Comply with Code of Conduct. DEC, PEC, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall be bound by the terms of the Code of Conduct set forth in Appendix A and as it may subsequently be amended.

SECTION VII FINANCINGS

The following Regulatory Conditions are intended to ensure (1) that DEC's and PEG's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (2) that both DEC and PEC have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their Customers.

These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, PEC, or Duke Energy. The approval of the Merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's or PEG's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the Merger.

7.1 Accounting for Equity Investment in Holding Company Subsidiaries. Duke Energy shall maintain its books and records so that any net equity investment in Cinergy Corp. and Progress Energy, their subsidiaries, or their successors, by Duke

Energy or any Affiliates can be identified and made available on an ongoing basis. This information shall be provided to the Public Staff upon its request.

7.2 Accounting for capital structure components and cost rates. Duke Energy, DEC, and PEC shall keep their respective accounting books and records in a manner that will allow all capital structure components and cost rates of the cost of capital to be identified easily and clearly for each entity on a separate basis. This information shall be provided to the Public Staff upon its request.

7.3 Accounting for Equity Investment in DEC and PEC. DEC and PEC shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC and PEC can be identified and made available upon request on an ongoing basis. This information shall be provided to the Public Staff upon request.

7.4 Reporting of Capital Contributions. As part of their Commission ES-1 Reports, DEC and PEC shall include a schedule of any capital contribution(s) received from Duke Energy in the applicable calendar quarter.

7.5 Identification of Long-term Debt Issued by DEC or PEC. DEC and PEC shall each identify as clearly as possible long-term debt (of more than one year's duration) that they issue in connection with their regulated utility operations and capital requirements or to replace existing debt.

7.6 Procedures Regarding Proposed Financings.

- (a) For all types of financings for which DEC or PEC (or their subsidiaries) are the issuers of the respective securities, DEC or PEC (or their subsidiaries) shall request approval from the Commission to the extent required by G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16. Generally, the format of these filings should be consistent with past practices. A "shelf registration" approach (similar to Docket No. E-7, Sub 727) may be requested.
- (b) For all types of financings by Duke Energy, other than short-term debt as described in G.S. 62-167, the following shall apply:
 - (i) On or before January 15 of each year, Duke Energy shall file with the Commission and serve on the Public Staff an advance confidential plan of all securities issuances that it anticipates to occur during that calendar year. The annual confidential plan shall include a description of all financings that Duke Energy reasonably believes may occur during the applicable calendar year. A description for each financing shall include the best estimates of the following: type of security; estimate of cost rate (e.g., interest rate for debt); amount of proceeds; brief description of the

purpose/reason for issue; and amount of proceeds, if any, that may flow to DEC or PEG.

- (ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.
- (iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7.6(b).
- (iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission's action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year's plan to the extent such securities were not issued during the previous year.
- (v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter, provided, however, that nothing herein shall affect the applicability of G.S. 62-170 or other similar provision to such securities or obligations.
- (vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the

same information as required above for the advance plans plus the actual issuance costs.

- (c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.
- (d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 Money Pool Agreement. Subject to the limitations imposed in Regulatory Condition 8.4, DEC and PEC may borrow through Duke Energy's "Utility Money Pool Agreement" (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA dated November 1, 2008, as filed with the Commission on November 17, 2008, in Docket No. E-7, Subs 795A and 810, plus PEC, PEF, Progress Energy, and PESC; and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by, Duke Energy, Progress Energy, and Cinergy Corp. If after December 31, 2011, Duke Ohio's generation assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), 03-93-ATA and Duke Ohio continues to be a participant in the Utility MPA, then DEC and PEC shall seek Commission approval within six months of such occurrence, in order to continue participating in the Utility MPA. DEC and PEC shall discontinue such participation within six months after the issuance of a Commission order denying such approval.

7.8 Borrowing Arrangements. Subject to the limitations imposed in Regulatory Condition 8.4, DEC and PEC may borrow short-term funds through one or more joint external debt or credit arrangements (a Credit Facility), provided that the following conditions are met:

- (a) No borrowing by DEC or PEC under a Credit Facility shall exceed one year in duration, absent Commission approval;
- (b) No Credit Facility shall include, as a borrower, any party other than Duke Energy, DEC, PEC, Duke Indiana, Duke Kentucky, PEF, and, subject to the limitations described in this section, Duke Ohio;
- (c) DEC's and PEG's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own; and

- (d) Duke Ohio may participate in a Credit Facility to the extent the above conditions are met and its generation assets remain dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), or subject to traditional utility regulation.

If after December 31, 2011, Duke Ohio's generation assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), then DEC and PEC shall be required to seek Commission approval within six months of such occurrence, in order to continue to participate in a Credit Facility in which Duke Ohio is or will be a participant. DEC and PEC shall discontinue such participation within six months after the issuance of an order by the Commission denying such approval.

7.9 Long-Term Debt Fund Restrictions. DEC and PEC shall acquire their respective long-term debt funds through the financial markets, and shall neither borrow from, nor lend to, on a long-term basis, Duke Energy or any of the other Affiliates. To the extent that either DEC or PEC borrows on short-term or long-term bases in the financial markets and is able to obtain a debt rating, its debt shall be rated under its own name.

SECTION VIII CORPORATE GOVERNANCE/RING FENCING

The following Regulatory Conditions are intended to ensure the continued viability of DEC and PEC and to insulate and protect DEC, PEC, and their Retail Native Load Customers from the business and financial risks of Duke Energy and the Affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of Affiliates.

8.1 Investment Grade Debt Rating. DEC and PEC shall manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies on all of their rated debt issuances. If DEC's or PEG's debt rating falls to the lowest level still considered investment grade at the time, DEC or PEC shall file written notice to the Commission and the Public Staff within five (5) days of such change and an explanation as to why the downgrade occurred. Within 45 days of such notice, DEC or PEC shall provide the Commission and the Public Staff with a specific plan for maintaining and improving its debt rating. The Commission, after notice and hearing, may then take whatever action it deems necessary consistent with North Carolina law to protect the interests of DEC's or PEG's Retail Native Load Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 Distributions from DEC and PEC to Holding Company. DEC and PEC shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (i) the

amount of Retained Earnings on the day prior to the closure of the Merger, plus (ii) any future earnings recorded by DEC and PEC subsequent to the Merger.

8.3 Debt Ratio Restrictions. To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC and PEC individually meet those restrictions.

8.4 Limitation on Continued Participation in Utility Money Pool Agreement and other Joint Debt and Credit Arrangements with Affiliates. DEC and PEC may continue to participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to their respective Retail Native Load Customers and does not negatively affect DEC's or PEC's ability to continue to provide adequate and reliable service at just and reasonable rates.

8.5 Notice of Level of Non-Utility Investment by Holding Company System. In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's or PEC's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.7 or other applicable authority) to protect Retail Native Load Customers, Duke Energy shall notify the Commission within 90 days following the end of any fiscal year for which Duke Energy reports to the Securities and Exchange Commission assets in its operations other than regulated utilities that are in excess of 22% of its consolidated total assets. The following procedures shall apply to such a notice:

- (a) Any interested party may file comments within 45 days of the filing of Duke Energy's notice.
- (b) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall make a recommendation as to how the Commission should proceed. If the Commission determines that the percentage of total assets invested in Duke Energy's its operations other than regulated utilities is reasonably likely to have an Effect on DEC's or PEC's Rates or Service so as to warrant action by the Commission to protect DEC's and PEC's Retail Native Load Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.6 Notice by Holding Company of Certain Investments. Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-

regulated business that represents five (5) percent or more of Duke Energy's book capitalization.

8.7 Ongoing Review of Effect of Holding Company Structure. The operation of DEC and PEC under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, PESC, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers to protect the economic viability of DEC and PEC, including the protection of DEC's and PEC's public utility assets from liabilities of Affiliates.

8.8 Investment by DEC or PEC in Non-regulated Utility Assets and Non-utility Business Ventures. Neither DEC nor PEC shall invest in a non-regulated utility asset or any non-utility business venture exceeding \$50 million in purchase price or gross book value to DEC or PEC unless it provides 30 days' advance notice. Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition. Purchases of assets, including land, that will be held with a definite plan for future use in providing Electric Services in DEC's or PEC's franchise area shall be excluded from this advance notice requirement.

8.9 Investment by Holding Company in Exempt Wholesale Generators. By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.10 Notice by DEC or PEC of Default or Bankruptcy of Affiliate. If an Affiliate of DEC or PEC experiences a default on an obligation that is material to Duke Energy or files for bankruptcy, and such bankruptcy is material to Duke Energy, DEC or PEC shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.

8.11' Annual Report on Corporate Governance. No later than March 31 of each year, DEC and PEC shall file a report including the following:

- (a) A complete, detailed organizational chart (i) identifying DEC, PEC and each Duke Energy financial reporting segment, and (ii) stating the business purpose of each Duke Energy financial reporting segment. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.

- (b) A list of all Duke Energy financial reporting segment that are considered to constitute non-regulated investments and a statement of each segment's total capitalization and the percentage it represents of Duke Energy's non-regulated investments and total investments. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (c) An assessment of the risks that each unregulated Duke Energy financial reporting segment could pose to DEC or PEC based upon current business activities of those affiliates and any contemplated significant changes to those activities
- (d) A description of DEC's, PEC's and each Significant Affiliates actual capital structure. In addition, describe Duke Energy's, PEC's and DEC's goals for DEC's and PEC's capital structure and plans for achieving such goals.
- (e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub 986, and E-2, Sub 998) in effect between DEC, PEC, and any of their Affiliates, and a description of the goal of each measure and how it achieves that goal, such as mitigation of DEC's and PEC's exposure in the event of a bankruptcy proceeding involving any affiliate(s).
- (f) A list of corporate executive officers and other key personnel that are shared between DEC, PEC and any Affiliate, along with a description of each person's position(s) with, and duties and responsibilities to each entity.
- (g) A calculation of Duke Energy's total book and market capitalization as of December 31 of the preceding year for common equity, preferred stock, and debt.

SECTION IX

FUTURE MERGERS AND ACQUISITIONS

The following Regulatory Conditions are intended to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, PEC, other Affiliates, or the Nonpublic Utility Operations. The advance notice provisions set forth in Regulatory Condition 13.2 do not apply to these conditions.

9.11 Mergers and Acquisitions by or Affecting DEC or PEC. For any proposed merger, acquisition, or other business combination by DEC or PEC or that would have an Effect on DEC's or PEC's Rates or Service, DEC or PEC shall file in a new Sub docket an application for approval pursuant to G.S. 62-111(a) at least 180 days

before the proposed closing date for such merger, acquisition, or other business combination.

9.2 Mergers and Acquisitions Believed Not to Have an Effect on DEC's or PEG's Rates or Service. For any proposed merger, acquisition, or other business combination that is believed not to have an effect on DEC's or PEG's Rates or Service, but which involves Duke Energy, other Affiliates, or the Nonpublic Utility Operations and which has a transaction value exceeding \$1.5 billion, the following shall apply:

- (a) Advance notification shall be filed with the Commission in a new Sub docket by the merging entities at least 90 days prior to the proposed closing date for such proposed merger, acquisition or other business combination. The advance notification is intended to provide the Commission an opportunity to determine whether the proposed merger, acquisition, or other business combination is reasonably likely to affect DEC or PEC so as to require approval pursuant to G.S. 62-1111(a). The notification shall contain sufficient information to enable the Commission to make such a determination. If the Commission determines that such approval is required, the 180-day advance filing requirement in subsection (a), above, shall not apply.
- (b) Any interested party may file comments within 45 days of the filing of the advance notification.
- (c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G.S. 62-1111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G.S. 62-1111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, PEC, and other Affiliates, and Nonpublic Utility operations as they may affect North Carolina retail ratepayers.

10.1 Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities. DEC and PEC shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, employees, rights, obligations, assets; or liabilities from DEC or PEC to DEBS, PESC, Duke Energy, another Affiliate, or a Nonpublic Utility Operation that (a) involves services, functions, departments, employees, rights, obligations, assets; or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's or PEG's public utility operations. The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to this Regulatory Condition.

10.2 Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes. Upon request, DEC and PEC shall meet and consult with, and provide requested relevant data to, the Public Staff, regarding plans for significant changes in DEC's, PEG's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on DEC's or PEG's retail rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or PEG's Retail Native Load Customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an Affiliate or Nonpublic Utility Operation and such proposed changes are likely to have an adverse impact on DEC's or PEG's Customers, then DEC's and PEG's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC and PEC shall inform the Public Staff promptly of any such events and changes.

SECTION XI SERVICE QUALITY

The following Regulatory Conditions are intended to ensure that DEC and PEC continue to implement and further their commitment to providing superior public utility service by meeting recognized service quality indices and implementing the best practices of each other and their Utility Affiliates, to the extent reasonably practicable.

11.1 Overall Service Quality. Upon consummation of the Merger, DEC and PEC each shall continue their commitment to providing superior public utility service and

shall maintain the overall reliability of electric service at levels no less than the overall levels it has achieved in the past decade.

11.2 Best Practices. DEC and PEC shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.

11.3 Quarterly Reliability Reports. DEC and PEC shall each provide quarterly service reliability reports to the Public Staff on the following measures: System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI). The Public Staff may make such quarterly service reliability reports available to the public upon request.

11.4 Notice of NERC Audit. At such time as either DEC or PEC receive notice that the North American Electric Reliability Corporation and/or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC or PEC's compliance with mandatory reliability standards, DEC or PEC shall notify the Public Staff.

11.5 Right-of-Way Maintenance Expenditures. DEC and PEC shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and NCUC Rule RB-26. In addition, DEC and PEC shall track annually, on a major category basis, departmental or division budget requests, approved budgets and actual expenditures for right-of-way maintenance.

11.6 Right-of-Way Clearance Practices. DEC and PEC shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.

11.7 Meetings with Public Staff.

- (a) DEC and PEC shall each meet annually with the Public Staff to discuss service quality initiatives and results, including (a) ways to monitor and improve service quality, (b) right-of-way maintenance practices, budgets, and actual expenditures, and (c) plans that could have an effect on customer service, such as changes to call center operations.
- (b) DEC and PEC shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

11.8 Customer Access to Service Representatives and Other Services. DEC and PEC shall continue to have knowledgeable and experienced customer service

representatives available 24 hours a day to respond to power outage calls and during normal business hours to handle all types of customer inquiries. DEC and PEC shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to perform routine customer interactions and to provide general billing and customer information.

11.9 Call Center Operations. DEC and PEC shall each provide quarterly reports to the Public Staff regarding measurements of call center performance, including answer times, and customer satisfaction with call center operations.

11.10 Customer Surveys. DEC and PEC shall continue to survey their customers regarding their satisfaction with public utility service and shall incorporate this information into their processes, programs, and services.

SECTION XII TAX MATTERS

The following Regulatory Conditions are intended to ensure that DEC's and PEG's North Carolina retail ratepayers do not bear any additional tax costs as a result of the merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 Costs under Tax Sharing Agreements. Under any tax sharing agreement, neither DEC nor PEC shall seek to recover from its North Carolina retail ratepayers any tax costs that exceed DEC's or PEG's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 Tax Benefits Associated with Service Companies. The appropriate portion of any income tax benefits associated with DEBS and PESC shall accrue to the North Carolina retail operations of DEC and PEC, respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 Filings that Do Not Involve Advance Notice. Regulatory Condition filings that are not subject to Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub 986, and E-2, Sub 998, as follows:

- (a) Filings related to affiliate matters required by Regulatory Conditions 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition 5.3 shall be made by DEC and PEC in Sub 986A and Sub 998A, respectively;

- (b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.5, 8.6, 8.9, 8.10 and 8.11 shall be made by DEC and PEG in Sub 986B and Sub 998B, respectively;
- (c) Files related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(i), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made by DEC and PEG in Sub 986C and Sub 998C;
- (d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Sub 986D;
- (e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.11 and 5.13 shall be made by DEC and PEG in Sub 986E and Sub 998E, respectively;

13.2 Advance Notice Filings. Advance notices filed pursuant to Regulatory Conditions 3.1(c), 3.3(b), 3.7(c), 3.10(c), 4.2, 5.3, 8.8, 10.1 shall be assigned a new, separate Sub docket. Such a filing shall state what condition and notice period are involved and whether other regulatory approvals are required and shall be in the format of a pleading, with a caption, a title, allegations of the activities to be undertaken, and a verification. Advance notices may be filed under seal if necessary. The following additional procedures apply:

- (a) Advance notices of activities to be undertaken shall not be filed until sufficient details have been decided upon to allow for meaningful discovery as to the proposed activities.
- (b) The Chief Clerk shall distribute a copy of advance notice filings to each Commissioner and to appropriate members of the Commission Staff and Public Staff.
- (c) DEC or PEG shall serve such advance notices on each party to Docket Nos. E-7, Sub 986, and E-2, Sub 998, that has filed a request to receive them with the Commission within 30 days of the issuance of an order approving the Merger in this docket. These parties may participate in the advance notice proceedings without petitioning to intervene. Other interested persons shall be required to follow the Commission's usual intervention procedures.
- (d) To effectuate this Regulatory Condition, DEC or PEG shall serve pertinent information on all parties at the time it serves the advance notice. During the advance notice period, a free exchange of information is encouraged, and parties may request additional relevant information. If DEC or PEG objects to a discovery request, DEC or PEG and the requesting party shall

try to resolve the matter. If the parties are unable to resolve the matter, DEC or PEC may file a motion for a protective order with the Commission.

- (e) The Public Staff shall investigate and file a response with the Commission no later than 15 days before the notice period expires. Any other interested party may also file a response within the notice period. DEC or PEC may file a reply to the response(s).
- (f) The basis for any objection to the activities to be undertaken shall be stated with specificity. The objection shall allege grounds for a hearing, if such is desired.
- (g) If neither the Public Staff nor any other party files an objection to the activities, no Commission order shall be issued, and the Sub docket in which the advance notice was filed may be closed.
- (h) If the Public Staff or any other party files a timely objection to the activities to be undertaken by DEC or PEC, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than two weeks after the objection is filed, and shall recommend that the Commission issue an order deciding how to proceed as to the objection. The Commission reserves the right to extend an advance notice period by order should the Commission need additional time to deliberate or investigate any issue. At the end of the notice period, if no order, whether procedural or substantive, has been issued, DEC, PEC, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the activity to be undertaken, but shall be subject to any fully-adjudicated Commission order on the matter.
- (i) If the Commission schedules a hearing on an objection, the party filing the objection shall bear the burden of proof at the hearing.
- (j) The precedential effect of advance notice proceedings, like most issues of res judicata, will be decided on a fact-specific basis.
- (k) If some other Commission filing or Commission approval is required by statute, notice pursuant to a Regulatory Condition alone does not satisfy the statutory requirement.
- (l) DEC, PEC, the Public Staff, or any party may move for a waiver if exigent circumstances in a particular case justify such.

SECTION XIV

COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT

The following Regulatory Conditions are intended to ensure that Duke Energy, DEC, PEC, and all other Affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in all of the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

14.1 Ensuring Compliance with Regulatory Conditions and Code of Conduct. Duke Energy, DEC, PEC, and all other Affiliates shall devote sufficient resources into the creation, monitoring, and ongoing improvement of effective internal compliance programs to ensure compliance with all Regulatory Conditions and the DEC/PEC Code of Conduct, and shall take a proactive approach toward correcting any violations and reporting them to the Commission. This effort shall include the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

14.2 Designation of Chief Compliance Officer. DEC and PEC shall designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's and PEG's Internet Website.

14.3 Annual Training. DEC and PEC shall provide annual training on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees (including service company employees) whose duties in any way may be affected by such requirements and standards. New employees must receive such training within the first 60 days of their employment. Each employee who has taken the training must certify electronically or in writing that s/he has completed the training.

14.4 Report of Violations. If DEC and PEC discover that a violation of their requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred then DEC and PEC shall file a statement with the Commission in Docket Nos. E-7, Sub 986C, and E-2, Sub 998C, respectively, describing the circumstances leading to that violation of DEC's or PEG's requirements or standards, as contained within the Regulatory Conditions and Code of Conduct, and the mitigating and other steps taken to address the current or any future potential violation.

APPENDIX A

**CODE OF CONDUCT
GOVERNING THE RELATIONSHIPS, ACTIVITIES,
AND TRANSACTIONS BETWEEN AND AMONG
THE PUBLIC UTILITY OPERATIONS OF DEC,
THE PUBLIC UTILITY OPERATIONS OF PEC,
DUKE ENERGY CORPORATION,
OTHER AFFILIATES, AND THE NONPUBLIC UTILITY
OPERATIONS OF DEC AND PEC**

FILED
SEP 02 2011
CLerk's Office
N.C. Utilities Commission

I. DEFINITIONS

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of this Code of Conduct, Duke Energy and any business entity controlled by it are considered to be Affiliates of each other and DEC and PEC are considered to be Affiliates of each other.

Commission: The North Carolina Utilities Commission.

Confidential Systems Operation Information: Nonpublic information that pertains to Electric Services provided by DEC or PEC, including but not limited to information concerning electric generation, transmission, distribution, or sales.

Customer: Any retail electric customer of DEC or PEC in North Carolina.

Customer Information: Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC or PEC in connection with the supplying of Electric Services to that Customer or group of Customers.

DEBS: Duke Energy Business Services, LLC, and its successor, which is a service company Affiliate that provides Shared Services to DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within DEC's North Carolina service territory that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy, which is the current holding company parent of DEC and PEC, and any successor company.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by DEC or PEC from sources other than DEC or PEC for the purpose of providing Electric Services.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (1) the return on common equity utilized in determining such cost of capital for each good and service supplied by or from DEC or PEC shall equal the return on common equity authorized by the Commission in each utility's most recent general rate case proceeding, and (2) the cost of capital for each good and service supplied to DEC or PEC shall not exceed the overall cost of capital authorized by the Commission in DEC each utility's most recent general rate case proceeding; provided further that the cost of capital for each good and service supplied by or from DEC and PEC to each other shall not exceed the overall cost of capital authorized by the Commission in the supplying entity's most recent general rate case proceeding.

JDA: Joint Dispatch Agreement, the agreement as filed with the Commission on April 1, 2011, and as revised and filed on April 4, 2011, in Docket Nos. E-7, Sub 980, and E-2, Sub 995, and allowed by the Commission to be filed with the FERC, by Order dated April 4, 2011, and as further revised and filed on June 22, 2011, and allowed to be filed with the FERC by Order dated July 11, 2011, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Progress Energy.

Natural Gas Services: Natural gas sales and natural gas transportation, and other related services, including, but not limited to, metering and billing.

Nonpublic Utility Operations: All business operations engaged in by DEC or PEC involving activities (including the sales of goods or services) that are not regulated by

the Commission, or otherwise subject to public utility regulation at the state or federal level.

PEC: Progress Energy Carolinas, Inc., the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the North Carolina Service Territory of PEC and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Personnel: An employee or other representative of DEC, PEC, Duke Energy, another Affiliate, or a Nonpublic Utility Operation, who is involved in fulfilling the business purpose of that entity.

PESC: Progress Energy Services Company and its successors, which is a service company Affiliate that provides Shared Services to PEC, DEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEC, individually or in combination.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of PEC, and which became a subsidiary of Duke Energy after the close of the Merger, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

Regulatory Conditions: The conditions imposed by the Commission in connection with or related to the Merger.

Shared Services: The services that meet the requirements of the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998, or subsequent orders of the Commission and that the Commission has explicitly authorized DEC or PEC to take from DEBS or PESC pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, Inc. (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), and Florida Power Corporation d/b/a Progress Energy Florida (PEF); and the regulated transmission and distribution operations of Duke Energy Ohio, Inc. (Duke Ohio).

II. GENERAL

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC and PEC, to the extent such relationships, activities, and transactions affect the operations or costs of utility service experienced by the public utility operations of DEC and PEC

in their respective service areas. DEC, PEC, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.11 approved by the Commission in Docket Nos. E-2, Sub 998, and E-7, Sub 986. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry; or other changes that warrant modification of this Code.

DEC, or PEC may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that exigent circumstances in a particular case justify such a waiver.

III. STANDARDS OF CONDUCT

A. Independence and Information Sharing

1. Separation - DEC, PEC, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable. DEC, PEC, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's and PEC's Nonpublic Utility Operations shall maintain separate records from those of DEC's and PEC's public utility operations to ensure appropriate cost allocations and any arm's-length-transaction requirements.

2. Disclosure of Customer Information:

- (a) Upon request, and subject to the restrictions and conditions contained herein, DEC and PEC may provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation under the same terms and conditions that such information is provided to non-Affiliates.
- (b) Except as provided in Section III.A.2.(f) below, Customer Information shall not be disclosed to any person or company, without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates or Nonpublic Utility Operations may be obtained by means of written authorization, electronic authorization or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC and PEC retain such authorization for verification purposes for as long as the authorization remains in effect.
- (c) If the Customer allows or directs DEC or PEC to provide Customer Information to Duke Energy, another Affiliate, or a

Nonpublic Utility Operation, then DEC or PEC shall ask the Customer if he, she, it would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC or PEC to provide Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.

- (d) Sections III.A.2.(a), 2.(b), and 2.(c) herein shall be permanently posted on DEC's and PEG's website.
- (e) No DEC or PEC employee who is transferred to Duke Energy or another Affiliate will be permitted to copy or otherwise compile any Customer Information for use by such entity except pursuant to written permission from the Customer, as reflected by a signed Data Disclosure Authorization. Neither DEC nor PEC shall transfer any employee to Duke Energy or another Affiliate for the purpose of disclosing or providing Customer Information to such entity.
- (f) Notwithstanding the prohibitions established by this Section III.A.2, DEC and PEC may disclose Customer Information to DEBS, PESC, any other Affiliate, a Nonpublic Utility Operation or a non-affiliated third party without Customer consent, but only to the extent necessary for the Affiliate, Nonpublic Utility Operation or non-affiliated third party to provide goods or services to DEC or PEC and upon their explicit agreement to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed.
- (g) DEC and PEC shall take appropriate steps to store Customer Information in such a manner as to limit access to only those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.
- (h) DEC and PEC shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.
- (i) No DEBS or PESC employee may use Customer Information to market or sell any product or service to DEC's or PEG's customers, except in support of a Commission-approved rate schedule or

program or a marketing effort managed and supervised directly by DEC or PEC.

- (j) DEBS and PESC employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of DEBS or PESC that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of the Utilities.
- (k) Should any inappropriate disclosure of DEC or PEC Customer Information occur at any time, DEC or PEC is required to promptly file a statement with the Commission in this docket describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.

3. The disclosure of Confidential Systems Operation Information of DEC and PEC (referred to hereinafter as "Information") shall be governed as follows:

- (a) Such Information shall not be disclosed by DEC or PEC to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing non-Affiliates contemporaneously and in the same manner. Disclosure to non-Affiliates is not required when disclosure to Affiliates or Nonpublic Utility Operations meets one of the following exceptions:
 - (i) The Information is provided to employees of DEC or PEC for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998;
 - (ii) The Information is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements;
 - (ii) A state or federal regulatory agency or court having jurisdiction over the disclosure of the Information requires the disclosure;
 - (iii) The Information is provided to employees of DEBS or PESC pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153;

- (iv) The Information is provided to employees of DEC's or PEC's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service;
 - (v) The Information is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S. 62-153, provided that the agreement specifically describes the types of Information to be disclosed;
 - (vi) Disclosure is otherwise essential to enable DEC or PEC to provide Electric Services to their Customers; or
 - (vii) Disclosure of the Information is necessary for compliance with the Sarbanes-Oxley Act of 2002.
- (b) Any Information disclosed pursuant to the exceptions in Section III.A.3(a), above, shall be disclosed only to employees that need the information for the purposes covered by those exceptions and in as limited a manner as possible. The employees receiving such Information must be prohibited from acting as conduits to pass the Information to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such Information.
- (c) For disclosures pursuant to exceptions (vi) and (vii) in Section III.A.3(a), above, DEC and PEC shall include in their annual affiliated transaction reports the following information:
- (i) The types of Information disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;
 - (ii) The reasons for the disclosure; and
 - (iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process.

To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

- (d) DEC, PEC, DEBS, and PESC employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC and PEC.

- (e) Should the handling or disclosure of Market Information, Transmission Information, or other CSOI by DEBS, PESC, or another Affiliate or Nonpublic Utility Operation, or their respective employees, result in (a) a violation of DEC's or PEC's FERC Statement of Policy and Code of Conduct (FERC Code), 18 CFR 358 - Standards of Conduct for Transmission Providers (Transmission Standards), or any other relevant FERC standards or codes of conduct, (b) the posting of such data on an OASIS or other Internet website, or (c) other public disclosure of the data, DEC or PEC shall promptly file a statement with the Commission in Commission in Docket Nos. E-7, Sub 986C, and E-2, Sub 998C, respectively, describing the circumstances leading to such violation, posting, or other this docket describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the mitigating and/or other steps taken to address the current or any future potential violation, posting, or other public disclosure.
- (f) Should any inappropriate disclosure of CSOI occur at any time, DEC or PEC shall promptly file a statement with the Commission in Docket Nos. E-7, Sub 986C, or E-2, Sub 998C, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.
- (g) Unless publicly noticed and generally available, should the FERC Code, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and PEC shall file a letter in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, with the Commission describing such action within 60 days of the action, along with a copy of any amended or replacement document.

B. Nondiscrimination

1. DEC's and PEC's employees and representatives shall not unduly discriminate against non-Affiliated entities.

2. In responding to requests for Electric Services, neither DEC nor PEC shall provide any preference to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, nor to any customers of such an entity, as compared to non-Affiliates or their customers. Moreover, neither DEC, PEC, Duke Energy, nor any other Affiliates shall represent to any person or entity that Duke Energy, another Affiliate, or a Nonpublic Utility Operation will receive any such preference.

3. DEC and PEC shall apply the provisions of their respective tariffs equally to Duke Energy, the other Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

4. DEC and PEC shall process all similar requests for Electric Services in the same timely manner, whether requested on behalf of Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity.

5. No personnel or representatives of the DEC, PEC, Duke Energy, or another Affiliate shall indicate, represent, or otherwise give the appearance to another party that Duke Energy or another Affiliate speaks on behalf of DEC or PEC; provided however, that this prohibition shall not apply to employees of DEBS or PESC providing Shared Services or to employees of another Affiliate to the extent explicitly provided for in an affiliate agreement that has been accepted by the Commission. In addition, no personnel or representatives of a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that they speak on behalf of DEC's or PEC's regulated public utility operations.

6. No personnel or representatives of DEC, PEC, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that any advantage to that party with regard to Electric Services exists as the result of that party dealing with Duke Energy, another Affiliate, or a Nonpublic Utility Operation, as compared with a non-Affiliate.

7. Neither DEC nor PEC shall condition or otherwise tie the provision or terms of any Electric Services to the purchasing of any goods or services from, or the engagement in business of any kind with, Duke Energy, another Affiliate, or a Nonpublic Utility Operation.

8. When any employee or representative of DEC or PEC receives a request for information from or provides information to a Customer about goods or services available from Duke Energy, another Affiliate, or a Nonpublic Utility Operation, the employee or representative shall advise the Customer that such goods or services may also be available from non-Affiliated suppliers.

9. Disclosure of Customer Information to Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity shall be governed by Section III.A.2 of this Code of Conduct.

C. Marketing

1. The public utility operations of DEC and PEC may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint marketing arrangement) with their Utility Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or

restrictions that the Commission may hereafter establish. Neither DEC nor PEC shall otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of DEC or PEC in any communications unless a disclaimer is included that states the following:

- (a) "[Duke Energy Corporation/Affiliate) is not the same company as [DEC/PEC], and [Duke Energy Corporation/Affiliate) has separate management and separate employees";
- (b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";
- (c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [DEC/PEC]"; and
- (d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [DEC/PEC]."

3. Nonpublic Utility Operations may not use the names or logos of DEC or PEC in any communications unless a disclaimer is included that states the following:

- (a) "[Nonpublic Utility Operation] is not part of the regulated services offered by [DEC/PEC] and is not in any way sanctioned by the North Carolina Utilities Commission";
- (b) "Purchasers of products or services from [Nonpublic Utility Operation] will receive no preference or special treatment from [DEC/PEC]"; and
- (c) "A customer does not have to buy products or services from [Nonpublic Utility Operation] in order to continue to receive the same safe and reliable electric service from [DEC/PEC]."

The required disclaimer must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

D. Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC or PEC and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC or PEC for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. As a general guideline, with regard to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC or PEC, and Duke Energy, the other non-utility Affiliates, and the Nonpublic Utility Operations, to the extent such prices affect DEC's or PEC's operations or costs of utility service, the following conditions shall apply:

- (a) Except as otherwise provided for in this Section III.D, for untariffed goods and services provided by DEC or PEC to Duke Energy, a non-utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC or PEC shall be set at the higher of Market Value or DEC's or PEC's Fully Distributed Cost.
- (b) Except as otherwise provided for in this Section III.D, for goods and services provided, directly or indirectly, by Duke Energy, a non-utility Affiliate other than DEBS or PESC, or a Nonpublic Utility Operation to DEC or PEC, the transfer price(s) charged by Duke Energy, the non-utility Affiliate, and the Nonpublic Utility Operation to DEC or PEC shall be set at the lower of Market Value or Duke Energy's, the non-utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC or PEC do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a non-utility Affiliate, or a Nonpublic Utility Operation, DEC and PEC shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's and PEC's Customers receive service at the lowest reasonable cost. For goods and services provided by DEBS and PESC to DEC, PEC, and Utility Affiliates, the transfer price charged shall be set at DEBS' and PESC's Fully Distributed Cost.
- (c) Tariffed goods and services provided by DEC and PEC to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services (such as time of use, manner of use, customer class, load factor, and relevant Standard Industrial Classification) under the applicable tariff.

- (d) Subject to and in compliance with all conditions placed upon DEC and PEC by the Commission, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC or PEC to DEC, PEC, or the Utility Affiliates or by the Utility Affiliates to DEC or PEC, shall be transferred at the supplier's Fully Distributed Cost.

4. To the extent that DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS or PESC (or their successors), these Shared Services may be jointly provided to DEC, PEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC and PEC is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC and PEC. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual(s) filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, PEC, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of natural gas, coal, and electricity or ancillary services intended for resale), if such joint purchases result in cost savings to DEC's and PEC's Customers. DEC, PEC, Duke Indiana, Duke Kentucky, and PEF, may capture economies-of-scale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's and PEC's Customers. Notwithstanding the foregoing, if any of the coal or natural gas jointly purchased by DEC, PEC, Duke Indiana, Duke Kentucky, or PEF is transferred to or utilized by another Affiliate within 12 months of the joint purchase, DEC and PEC will file a notification of such with the Commission. All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's and PEC's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manuals required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC and PEC incur in assembling, compiling, preparing, or furnishing requested Customer Information or Confidential Systems Operation Information for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or

non-Affiliates shall be recovered from the requesting party pursuant to Section III.D.3 of this Code of Conduct.

8. Any technology or trade secrets developed, obtained, or held by DEC or PEC in the conduct of regulated operations shall not be transferred to Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission; provided however, that DEC and PEC are not required to provide advance notice for such transfers to each other. DEC and PEC may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC and PEC shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. Regulatory Oversight

1. The State's existing requirements regarding affiliate transactions, as set forth in G.S. 62-153, shall continue to apply to all transactions between DEC, PEC, Duke Energy, and the other Affiliates.

2. The books and records of DEC, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC or PEC with Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or PEC to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or PEC shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

F. Utility Billing Format

To the extent any bill issued by DEC and PEC, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes any charges to Customers for Electric Services and non-Electric Services from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for the Electric Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services will not be terminated for failure to pay for any other services billed.

G. Complaint Procedure

1. DEC and PEC shall establish complaint procedures to resolve potential complaints that arise due to the relationship of DEC and PEC with Duke Energy, its other Affiliates, and its Nonpublic Utility Operations. The complaint procedures shall provide for the following:

- (a) Verbal and written complaints shall be referred to a designated representative of DEC or PEC.
- (b) The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.
- (c) DEC or PEC shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.
- (d) DEC and PEC shall each maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff, or the Public Staff.

2. Notwithstanding the provisions of Section III.G.1, any complaints received through Duke Energy's EthicsLine (or successor), which is a confidential mechanism available to the employees of the Duke Energy holding company system, shall be handled in accordance with procedures established for EthicsLine.

3. These complaint procedures do not affect a complainant's right to file a formal complaint or otherwise address questions to the Commission.

**CODE OF CONDUCT
ATTACHMENT A**

DEC/PEC CUSTOMER INFORMATION DISCLOSURE AUTHORIZATION

For Disclosure to Affiliates:

DEC's/PEC's Affiliates offer products and services that are separate from the regulated services provided by DEC/PEC. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/PEC to provide any data associated with the Customer account(s) residing in any DEC/PEC files, systems or databases **[or specify specific types of data]** to the following Affiliate(s) _____ . DEC/PEC will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

For Disclosure to Nonpublic Utility Operations:

DEC/PEC offers optional, market-based products and services that are separate from the regulated services provided by DEC/PEC. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/PEC to use any data associated with the Customer account(s) residing in any DEC/PEC files, systems or databases **[or specify types of data]** for the purpose of offering and providing energy-related products or services to the Customer. DEC/PEC will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.